

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

FILED

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U.S. DISTRICT COURT
N.D. OF ALABAMA

JAMES H. KARR, JR. and)
AMERICAN TEACHERS SERVICES,)
INC.,)

PLAINTIFFS,)

VS.)

INVESTORS CONSOLIDATED)
INSURANCE COMPANY,)
a Corporation,)

DEFENDANT.)

CV99-H-293-8

Jm

ENTERED

MAR 26 1999

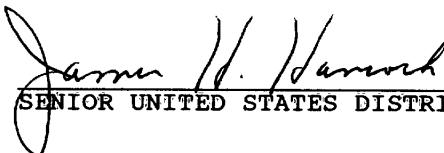
MEMORANDUM OF DECISION

On February 9, 1999 plaintiffs sought to invoke the jurisdiction of this court to pursue claims endeavored to be stated in seven separate counts. Counts I through V in varying ways seek to state claims for fraudulent conduct under the laws of Alabama but wholly fail to satisfy the pleading requirements of Fed. R. Civ. P. 9(b); Count VI seeks to state a claim under the laws of Alabama predicated upon negligent and/or wanton conduct but wholly fails to set forth facts sufficient arguably to demonstrate a duty, the breach of which gives rise to a claim for negligence or wanton misconduct; and Count VII seeks to state a claim for breach of contract and of fiduciary duty but fails to set forth sufficient facts out of which arguably a fiduciary obligation arose and fails to identify an aspect of a particular contract which was breached by the alleged conduct of defendant.

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The court has before it the March 3, 1999 motion of defendant to dismiss or, alternatively, for a more definite statement. The motion correctly points out the failure in Counts I through V of the complaint to satisfy Rule 9(b) and the motion for a more definite statement would be due to be granted were it not for a more significant deficiency in the complaint. As noted earlier, plaintiffs' complaint seeks to invoke the jurisdiction of this court based upon diversity of citizenship, but it fails adequately to allege the citizenship of plaintiff James H. Karr, Jr. It also fails adequately to allege the citizenship of plaintiff American Teachers Services, Inc. And, under *McGovern v. American Airlines, Inc.*, 511 F.2d 653 (5th Cir. 1975), it fails adequately to allege the citizenship of the remaining party, Investors Consolidated Insurance Company. Under the totality of the circumstances the motion for a more definite statement will not be granted, but the court will enter an order dismissing this action, without prejudice.

DONE this 26th day of March, 1999.



SENIOR UNITED STATES DISTRICT JUDGE